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September 12, 2006

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case:	Personnel Security Hearing
Date of Filing:	July 19, 2005
Case Number:	TSO-0268

This Decision concerns the continued eligibility of XXXXXXXXXXXX XX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be restored at this time.

I. Background

The individual is employed by a DOE contractor and held a security clearance at the contractor's request. During a routine re-investigation, DOE received derogatory information regarding the individual's alcohol use. In order to resolve the security concern arising from this information, DOE conducted a Personnel Security Interview (PSI) with the individual in October 2004. The PSI did not resolve the concern, and in January 2005, a DOE consultant-psychiatrist evaluated the individual. In a written report memorializing the evaluation (Report), the DOE consultant-psychiatrist opined that the individual drinks alcohol habitually to excess, and has not shown adequate evidence of rehabilitation or reformation. Report at 26-27.

In May 2005, DOE informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (May 27, 2005). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (j) (Criterion J). The DOE Operations Office invoked Criterion J on the basis of information that the individual "has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8 (j). In this regard, the Notification Letter cites the opinion of the DOE consultant-psychiatrist that the individual has been or is a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed

me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call his wife, a psychiatrist, a pharmacologist, and three colleagues as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents submitted by the individual shall be cited as "Indiv. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored at this time because I conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual began drinking alcohol in high school, consuming a few beers once every couple of months. Ex. 20 (PSI 2004) at 28. In 1984, the individual's senior year in college, he began drinking mixed drinks every weekend. Between 1985 and 1992, the individual would drink to intoxication six or seven times per year. Ex. 10 at 20. He married in 1990, and his then wife was a heavy drinker. Between 1992 and 1996, the individual stated that

he was intoxicated two or three times a year and also admitted to driving while intoxicated once or twice a year during the same time period. *Id.* In January 1993, the individual was hired by a DOE contractor. Ex. 20 (PSI 1994). He and his wife divorced later that year. Ex. 14 at 6. At the request of his employer, the individual completed a Questionnaire for National Security Positions (QNSP) in 1994 in order to obtain a security clearance for his new position. Ex. 14. After some “discrepancies” in the QNSP were resolved by a 1994 PSI, the individual was granted a clearance in December 1994. Ex. 5, 8, 9, 20, 29. One night in September 1996, the individual went out to dinner and then a nightclub. During the evening, he consumed four mixed drinks, wine and two beers. The police stopped him on his way home and arrested him for aggravated driving while intoxicated (DWI). Ex. 21. The individual promptly reported his arrest to DOE security. Ex. 12. According to the individual, that was the last time that he drove a vehicle after drinking. He pled not guilty in February 1997, but was found guilty and sentenced to 90 days in jail (with 88 suspended), a fine, and 48 hours of community service and ordered to attend DWI school. Ex. 15, 16.

In September 2000, the individual remarried. Ex. 21. The DOE conducted a routine re-investigation of the individual’s background for clearance purposes in March 2002. Ex. 21. This investigation uncovered some derogatory information regarding the individual’s alcohol use, and in October 2004 DOE scheduled a second PSI in order to resolve this information. Ex. 5, 21, 19 (2004 PSI). During the PSI, the individual described his alcohol use and also agreed to a psychiatric evaluation to resolve the security concerns arising from his DWI and his alcohol consumption. Ex. 10.

In preparation for the evaluation, the DOE psychiatrist read the individual’s file. The DOE psychiatrist took particular note of how the individual’s current wife described her husband’s alcohol consumption during the 2002 re-investigation. See PSI 2004 at 38. The individual’s wife told the investigator that her husband consumed “two to three martinis on one or two weekdays, and three to five martinis on each weekend night.” Ex. 5; Ex. 19 at 42. According to the investigator, the wife said that the individual was “tipsy” once a week, slurring his words and suffering slight loss of motor skills, to the point where he had to “sleep it off.” Ex. 10 (Report) at 13. She also stated that the individual has a high tolerance for alcohol, was raised in a family that consumed alcohol regularly, and drinks to intoxication once or twice a year. Report at 13. During the same investigation, the individual himself admitted that he drank to intoxication once or twice a year. Report at 12-13.

The DOE psychiatrist met with the individual in January 2005 for one and one-half hours. Asked to describe his current alcohol consumption, the individual told the DOE psychiatrist that in the previous week, he had consumed nine and one-half martinis and one shot of bourbon, which he considered “a fairly typical week of drinking.” Report at 19. The individual consumed two martinis on Thursday, three on Friday, two and one-half on Saturday along with a shot of bourbon, and two martinis on Sunday. Report at 18. On Thursdays and Sundays, he would consume alcohol over a period of one to two hours, and on Fridays and Saturdays, he consumed alcohol over a three-hour period. Report at 20. He said that he typically drinks three or four days a week--once during the week and every Friday and Saturday evening--and that he did not intend to reduce his use of alcohol. *Id.* at 22. The psychiatrist sent the individual to a medical lab for drug and alcohol testing.

The results of the lab test contained no evidence of recent drug use. In addition, the DOE psychiatrist found that the individual's liver enzymes did not indicate ongoing alcohol abuse. Report at 23. Nonetheless, the DOE psychiatrist concluded that the individual was legally intoxicated at least twice in the week prior to his examination and that his blood alcohol content (BAC) was a mere .002 from intoxication on two other days. Report at 25. The psychiatrist came to this conclusion after calculating the individual's BAC using an online calculator based on the Widmark equation, which utilizes the variables of age, sex, height, weight, ounces of liquor consumed and time period of alcohol consumption. Report at 9, fn. 21; Report at 20, fn. 52; Tr. at 19. According to the calculator, the individual had a BAC of .115 on the Friday and Saturday night preceding the evaluation and .078 on the Thursday and Sunday night preceding the examination.¹ The calculator considered one drink to equal one shot of 80 proof liquor, and also assumed that the individual was drinking on an empty stomach. Report at 18; Tr. at 20. Because the individual made his martinis with two shots of 80 proof gin and a splash of vermouth, the DOE psychiatrist considered one martini to be the equivalent of two regular drinks. Report at 7, 18. As recently as December 2004, the individual consumed six martinis on a Friday night. Report at 21.

The DOE psychiatrist could not arrive at a psychiatric diagnosis after his interview with the individual. Based on his BAC calculations, however, he opined that the individual was a user of alcohol habitually to excess from 1985-1992 and in 2005. Report at 26. The psychiatrist defined "drinking habitually to excess" as drinking to intoxication at least four times per year. Report at 2, 23; Tr. at 26. According to the DOE psychiatrist's calculations and the individual's own description of an average week of drinking, the individual was intoxicated weekly. He further found that the individual, who continued to drink alcohol, did not present adequate evidence of rehabilitation or reformation. *Id.* at 11. In order to show adequate evidence of rehabilitation from this condition, the DOE psychiatrist recommended in his report that the individual either: (1) attend Alcoholics Anonymous (AA) with a sponsor and work on the 12 Steps at least once a week for a minimum of 100 hours in a year and abstain from alcohol for one year; or (2) complete a six-month alcohol treatment program and abstain for two years. *Id.* In order to demonstrate reformation from drinking habitually to excess, the DOE psychiatrist recommended that the individual either abstain for three years, or abstain for one or two years if he attends one of the two rehabilitation programs above. *Id.* at 26.

B. DOE's Security Concerns

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this

¹ The legal limit in the individual's state is .08. Report at 20, fn. 52.

case, a DOE psychiatrist opined that the individual is a user of alcohol habitually to excess. The individual also has one alcohol-related arrest. Therefore, DOE's security concerns are valid and the agency has properly invoked Criterion J in this case.

C. Hearing Testimony

1. The DOE Psychiatrist

The DOE psychiatrist testified at the beginning of the hearing that he had reviewed the individual's file prior to the January 2005 interview. Tr. at 10. His initial impression after reading the file was that he needed to ask questions and get more information about the individual's alcohol consumption. *Id.* at 14. During the evaluation, the individual disclosed that his mother was an alcoholic. The DOE psychiatrist found this significant because there is an increased risk of alcoholism in an individual with a "first degree relative" who is an alcoholic.² *Id.* at 15. The DOE psychiatrist stated that he considered the individual's wife, who described her husband in the file as intoxicated weekly, to be a reliable witness. *Id.* at 16. When other sources in the investigation also described seeing the individual intoxicated, this reaffirmed the DOE psychiatrist's suspicion of an alcohol problem. *Id.* at 21. Further, the psychiatrist noted that the individual drinks martinis, which he makes with two ounces of gin and a splash of vermouth. Because gin is 80 proof, each martini is actually the equivalent of two drinks. *Id.* at 17-18.

In order to show adequate evidence of rehabilitation, the DOE psychiatrist recommended that the individual attend Alcoholics Anonymous (AA) for 100 hours and abstain from alcohol for one year, or attend a six month alcohol treatment program and abstain for two years. *Id.* at 13-14. In order to show reformation, the individual must abstain for three years. *Id.* at 13.

The DOE psychiatrist expressed concern that the individual exhibited a drinking pattern similar to many individuals who reduce their consumption while trying to get or keep a security clearance, only to resume their excessive drinking after securing their clearance. *Id.* at 251. He argued that the individual abused alcohol in the past, and was drinking habitually to excess in 2002. *Id.* at 250. Given his prior alcohol arrest, an alcoholic parent, and a prior history of alcohol abuse, the DOE psychiatrist concluded that without the benefit of alcohol education from AA, it was more likely than not that the individual would revert to his pattern of drinking habitually to excess, which is a security concern. *Id.* at 250-251.

2. Other Witnesses

The individual's current wife admitted that during a 2002 investigation, she told the investigator that the individual gets tipsy once a week, and that he was intoxicated once or twice a year. Tr. at 74. However, she argued that the investigator confused her definition of intoxication with her definition of tipsy. *Id.* at 73. She defined tipsy as "relaxed, more sociable, and talkative." *Id.* at 76. She identified slurred speech and slight loss of motor

² A first degree relative is related to the individual by half, e.g. a sibling, child or parent. Tr. at 15.

skills as attributes of intoxication, and testified that the individual is intoxicated only once or twice a year. *Id.* at 73-75. It takes six or seven drinks for the individual to be intoxicated, and she last saw him intoxicated in June 2004, almost 18 months before the hearing. *Id.* at 89. She explained that most of their alcohol consumption takes place at home. They typically have a “cocktail hour” complete with hors d’oeuvres on a weekday evening to unwind. *Id.* at 80. The individual drinks two to three cocktails on Friday and Saturday nights and sometimes one during the week. *Id.* at 85. The second drink is diluted because the individual adds gin to the shaker, which contains melting ice left over from the first drink. He also uses only one shot of gin for the second and third drinks, not two. When they go out, they will drink one cocktail before dinner and one glass of wine with dinner. She has seen no negative impact on their relationship or his performance at work, and does not believe that the individual has a problem with alcohol. *Id.* at 83-84. Significantly, she testified that the individual stopped drinking in February 2005, and she has not seen any signs of withdrawal or cravings in his current behavior. She continues to drink alcohol, and he appears comfortable drinking non-alcoholic beverages while she consumes alcohol in his presence.

The individual also offered the testimony of his supervisor and two colleagues. The supervisor has known the individual for four years, and socializes with the individual a couple of times a year. He was recently at the individual’s home, and did not see him drink alcohol. He has never seen the individual intoxicated. He last saw the individual drink in the summer of 2004, more than one year prior to the hearing. He described the individual as a good performer and very security conscious. Tr. at 98-109. The second witness has known the individual for almost five years, and has never had any suspicion that the individual may be under the influence of alcohol at work. He last saw the individual drink at a holiday party one or two years prior to the hearing. The third witness is also a colleague, but does not socialize with the individual. He considers the individual a very conscientious worker, and has never seen him intoxicated. Tr. at 124-126.

3. Expert Witnesses

a. Pharmacologist

The individual presented two expert witnesses, a psychiatrist and a scientist who holds a PhD in pharmacology and had special training in the pharmacokinetics of alcohol.³ The pharmacologist recently retired from a local medical school after 25 years of teaching the pharmacology of alcohol, and is now a professor emeritus at that institution. Tr. at 174-175. He had special training in the pharmacokinetics of alcohol. Prior to attending the hearing, the pharmacologist reviewed the report of the DOE psychiatrist and personally interviewed the individual. The pharmacologist heard the testimony of the DOE psychiatrist, the individual’s wife, the individual, and the individual’s colleagues. During the hearing, the pharmacologist used hearing testimony and the figures in the DOE psychiatrist’s report to calculate his own set of blood alcohol levels for the individual. He first calculated the individual’s total body water and the amount of alcohol consumed in

³ Pharmacokinetics is the study of the physical absorption, metabolism and excretion of drugs. Webster’s II New Riverside University Dictionary (1988).

order to arrive at the concentration of alcohol per liter. He used the “Widmark Equation” to determine the BAC. Tr. at 179-180.⁴ He then did two sets of calculations. First, he used the table in the Report that set forth the amount of drinks the individual consumed in the week prior to the psychiatric evaluation. He then calculated a range for the BAC instead of one specific number. According to the pharmacologist, a range was more accurate because the rate of “burn off” of the alcohol, i.e. how fast the individual’s body burned off alcohol, was unknown. *Id.* at 181-182. He calculated that the BAC range on Sunday, after one drink, was .050 to .069. On Friday and Saturday, after two to three drinks, the range was .07 to .10. *Id.* at 184.

For the second set of calculations, the pharmacologist used information provided by the individual regarding the amount of alcohol actually in the martinis that he drank weekly. Because the individual and his wife testified that the drinking took place while the individual was eating, the pharmacologist addressed this issue also. According to the pharmacologist, food in the stomach decreases the rate of absorption of alcohol from the stomach. The rate of absorption measures the speed at which the alcohol passes from the gastrointestinal tract into the bloodstream. Tr. at 190. The longer the alcohol sits in the stomach, the more is metabolized by gastric alcohol dehydrogenase, an enzyme that metabolizes alcohol. Tr. at 188. This activity tends to decrease the amount of alcohol that is passed to the small intestine that can ultimately be absorbed. Thus, according to the pharmacologist, food in the individual’s stomach during drinking can lower the BAC calculation up to 52%. Tr. at 189-192.

Using the Widmark formula again, the pharmacologist calculated that the individual’s BAC was between .053 and .083 on weekend nights, compared to the DOE psychiatrist’s calculation of .115. The pharmacologist calculated the BAC fell within the range of .041 and .060 on Sunday night. The pharmacologist claimed that his numbers are more accurate because he did not use an online calculator, but instead relied on his own extensive experience in the field to incorporate into his calculations the individual’s pattern of eating while he drank his martinis. The second set of calculations also used information regarding how much alcohol the individual put in his martini. Tr. at 185. The pharmacologist argued that his second set is more accurate because it factored in a more accurate amount of alcohol—i.e., it took into account the progressive dilution of the second and third martinis and the individual’s food consumption while drinking. *Id.* at 186-188.

The pharmacologist also argued that the wife’s description of the individual’s behavior during the weekend cocktail hours is consistent with a BAC range of .04-.05. Tr. at 192, 199. According to the pharmacologist, at the range of .01 to .05 BAC, a person exhibits normal behavior. *Id.* at 191-192. At higher levels, such as .05 to .08, there is a progression to mild euphoria, sociability, and verbosity. *Id.* at 194-195. When the number is even more elevated, an individual will manifest increased self confidence, decreasing inhibitions, diminished attention, judgment and control. *Id.* At the end of the scale, an individual exhibits the beginning of sensory motor impairment. *Id.* Based on his calculations of the individual’s BAC during the week, the pharmacologist concluded that the individual was not drinking habitually to excess, as defined by the DOE psychiatrist.

⁴ The online calculator used by the DOE psychiatrist was also based on the Widmark formula.

The pharmacologist stated that based on the testimony, the individual's behavior was consistent with a BAC of .04-.05. Tr. at 199. He also stressed that it is virtually impossible to accurately determine a blood alcohol level without more information than was available in this proceeding, or an actual Breathalyzer test. Id. at 198-199.

b. Forensic Psychiatrist

The forensic psychiatrist met with the individual for a psychiatric evaluation prior to the hearing. During the evaluation, the individual described his drinking patterns to the forensic psychiatrist, who concluded that the individual did not drink habitually to excess, and that there was no negative impact on the individual's life from the amount of alcohol that he consumed in the past. The forensic psychiatrist argued that the key question at this point in the individual's life was "How does the individual function from a clinical view point?" After evaluating the individual's life and reviewing his file, the forensic psychiatrist concluded that the individual is functioning well at work, at home, and in other parts of his life and therefore has no problem with alcohol.

The forensic psychiatrist did not agree with the opinion of the DOE psychiatrist that the individual drinks habitually to excess. According to the forensic psychiatrist, the screening test administered by the DOE psychiatrist was sufficient to determine the outer limits of the individual's drinking, but only a detailed examination could determine how alcohol had affected the individual's life. The forensic psychiatrist opined that the individual functions well in all facets of life. He was impressed by the individual's decision after the DWI that he should no longer drive after drinking. The forensic psychiatrist argued that making this choice and successfully executing it exhibited a level of rehabilitation and reformation appropriate even for alcohol abuse or dependence. The forensic psychiatrist argued that the individual did not need to attend AA sessions to show rehabilitation and reformation. He concluded that the individual had accomplished on his own the same goals that he could achieve through AA – maintaining sobriety under similar life conditions, establishing a social network, and building self-esteem. According to the forensic psychiatrist, the individual is clearly not crossing a threshold to habitual and excessive drinking. The forensic psychiatrist concluded that the family "cocktail hour" was actually a "social hour," because the couple maintained this tradition of relaxing at the end of some days even after the individual abstained from alcohol. Tr. at 222-223. In fact, he concluded that the individual's behavior while drinking, as described by the individual and his wife, was consistent with a BAC of .05, and "significantly below the .08 level." Id. at 233.

4. The Individual

The individual's account of his drinking did not differ from that of his wife. He said that as a child, his parents had a cocktail at the end of each day while they discussed their activities and current events. He continues that custom today with his wife. Tr. at 135-138. His DWI arrest in 1996 was a "wake up call," and he has not driven after drinking since. After that arrest, he appointed a designated driver when he was drinking, or he would not drink at all. His typical drinking pattern was to have three drinks on Fridays and Saturdays, and one or two on Thursdays and Sundays. Tr. at 149, 158. During the week, the couple eats light snacks while drinking, and on the weekend they have a more substantial appetizer

with their cocktails. Tr. at 150. He noted that the DOE psychiatrist did not ask him about any food consumption while drinking. Tr. at 155. He makes his first martinis with two shots of gin each, and his second and third drinks are more diluted as they use melting ice that is already in the shaker. Tr. at 150-152. He does not always finish his third drink. Tr. at 152. After drinking, he is more sociable, talkative, and euphoric. Tr. at 153. He does not experience a loss in his motor skills, senses, judgment, or control. Tr. at 153. He had been intoxicated two or three times per year, but was last intoxicated in June 2003, and has no plans to continue to drink. Tr. at 160-165. He had his last drink of alcohol in February 2005, admitting that he quit because of the threat to his clearance. Tr. at 147. He has not had any withdrawal symptoms or problems with his wife. *Id.* at 148. He has never had alcohol treatment and does not plan to do so unless recommended by a medical professional. He still has alcohol in the house, but is not bothered by its presence. *Id.* at 166-167.

D. Mitigation of Security Concerns

The individual's 1996 DWI arrest raised a valid security concern as stated in Section II.B above. The subsequent opinion of the DOE psychiatrist that the individual drinks habitually to excess added to that concern. The DOE psychiatrist based his opinion on BAC calculations of .115 on most Friday and Saturday nights, over the legal driving limit in his state. The forensic psychiatrist also evaluated the individual, but concluded that the individual has no alcohol problem. In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001)*. However, in this case, both sides have presented conflicting expert opinions. After reviewing the evidence in the record and the testimony at the hearing, I conclude, for the following reasons, that the individual has mitigated the security concerns

First, I find that the calculations of the pharmacologist were more persuasive than those of the DOE psychiatrist. The pharmacologist is an expert in how alcohol is processed by the body, and has studied this area for over 25 years. Using the more detailed information gleaned from the hearing testimony and his experience, the pharmacologist calculated a lower range of BAC than the DOE psychiatrist. The pharmacologist, using testimony that the individual drank progressively diluted drinks and ate while he consumed those cocktails, determined that the individual's BAC fell within a range of .053 to .083 during the weekends. The pharmacologist also persuasively justified using a BAC range, rather than a single number, because the burn off rate of the alcohol is unknown. Second, a medical professional, a psychiatrist who also has extensive experience in alcohol disorders, evaluated the individual and concluded that the individual does not have an alcohol problem, has a stable life, and has been able to achieve on his own the same benefits he would derive from attending AA. I find the testimony of the individual's psychiatrist more persuasive than the testimony of the DOE psychiatrist in this proceeding. Third, the individual was able to drink responsibly after the 1996 DWI, until early 2005 when he stopped drinking alcohol. Because there is no evidence in the record of any alcohol-related problems during the 10 years that he continued to drink, I conclude that the individual used alcohol responsibly for the 10 years prior to the hearing. Fourth, there is

evidence in the record that the individual has established a pattern of abstinence in the nine months prior to the hearing, and he has stated his intent not to drink again.

After evaluating the evidence in this case, I find that the individual has mitigated the security concerns of Criterion J. 10 C.F.R. § 710.8 (j). The individual's wife corroborated his contention that he has abstained from alcohol for nine months. A mental health professional has presented persuasive evidence, based on the calculations of a scientist specializing in the effects of alcohol on the bloodstream, that the individual does not drink habitually to excess, and has not in the past. The DWI arrest occurred 10 years prior to the hearing and I find it has been mitigated by time. In the subsequent 10 years, he has had no further alcohol-related legal incidents and has demonstrated the responsible use of alcohol. There is substantial evidence in the record that the individual is an excellent employee and a good husband and father. Thus, in view of Criterion J and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: September 12, 2006